the costs they incur in paying LECs to implement FLEX ANI for payphone compensation.[134] That issue was previously addressed by the Commission. The Commission concluded in the *Payphone Orders* that IXCs are the primary beneficiaries of dial-around calls and they should perform per-call tracking and pay per-call compensation. In addition, the Commission concluded in the *Second Report and Order* that the costs of providing coding digits to IXCs is a cost of doing business of PSPs for which IXCs must provide compensation as part of the per-call rate.[135]

45. USTA contends that the Commission must authorize full cost recovery and additional time for LECs that implemented LIDB for CC Docket No. 91-35. As discussed below, we grant LECs that have implemented LIDB for CC Docket No. 91-35, and assumed that it would meet the requirements of the *Payphone Orders*, additional time to implement FLEX ANI for the payphone proceeding. With regard to cost recovery for LIDB expenditures, it is unclear what additional costs would have been incurred to implement LIDB to comply with the payphone-specific coding digit requirement of the *Payphone Orders*, separate from those incurred for CC Docket No. 91-35. Because we do not have sufficient information on the record, we deny USTA's request.

D. *Blanket Waiver and Blanket Permission Under Part 69*

46. Under Part 69.4(g) of the Commission's Rules, 47 C.F.R. § 69.4(g), a LEC subject to price cap regulation may establish a switched access rate element for a new interstate service upon approval of a petition demonstrating that establishment of the new rate element would be in the public interest.[136] Because Part 69 authorizes only a limited number of rate elements, a non-price cap LEC must still obtain a waiver of that Part to establish any rate element for a new interstate service. In response to the request of the LEC Coalition for a blanket waiver of Part 69 and to the separate petition of BellSouth for permission to establish such a new rate element under Part 69.4(g) of the Commission's rules, we take two actions below: first, for LECs not subject to price cap regulation that must secure such waivers, we grant a blanket waiver of Part 69.4(b) and (c) of the Commission's rules to enable those LECs to establish an appropriate new rate element in their interstate tariffs that reflects the incremental costs directly attributable to the implementation of FLEX ANI to transmit payphone-specific coding digits for the purposes of payphone compensation as described elsewhere in this Order and to file the necessary revisions to their interstate tariffs. Second, we grant to those price cap LECs that must secure it, blanket permission under Part 69.4(g) of the Commission's rules to establish a new rate element in their interstate tariffs that reflects those same incremental costs and to file the necessary revisions to their tariffs.

47. The LEC Coalition states that carriers need a blanket Part 69 waiver to establish a new rate element to recover these transmission costs from PSPs.[137] BellSouth, a price cap LEC, also

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134 Sprint opposes the petitions for waivers, argues that IXCs need FLEX ANI only for payphone compensation, and that IXCs should not have to pay for the implementation of FLEX ANI. Sprint Reply Comments at 4.

135 *Second Report and Order* at paras. 52-53.

136 Section 69.4(g)(1)(i) of the Commission's Rules, 47 C.F.R. § 69.4(g)(1)(i). *See, e.g., Petition of Ameritech to Establish a New Access Tariff Service and Rate Elements Pursuant to Part 69 of the Commission's Rules,* CCB/CPD File No. 97-46, Memorandum Opinion and Order, DA 97-229 (rel. Oct. 30, 1997).

137 LEC Coalition Petition at 4.

seeks permission under Part 69.4(g) to establish a new rate element to be assessed on PSPs to recover the such costs.[138] We believe that the requested blanket waiver of Part 69 and that a similar blanket permission under Part 69.4(g) would serve the public interest by expediting the filing of the tariff revisions necessary to recover the costs of transmitting these payphone-specific digits and by preventing the repeated expenditure of carrier and staff resources to revisit public interest and other issues already examined in the *Payphone Orders*, the *Second Report and Order*, and this Order. We will review the details of the individual LEC Part 69 offerings upon the filing of the relevant tariff transmittals.

48. Under Section 1.3 of the Commission's rules, we are authorized to grant waivers "if good cause therefor is shown."[139] Generally, this requires that a petitioner demonstrate that "special circumstances warrant a deviation from the general rule and that such a deviation will serve the public interest."[140] Under Part 69.4(g), price cap LECs need only show that establishment of a new rate element would be in the public interest.

49. We conclude that special circumstances exist and that it would be in the public interest to grant a blanket waiver of the rate structure requirements of Part 69.4(b) and (c) to allow non-price CAP LECs to develop a new rate element to recover the incremental costs specified earlier from PSPs.[141] As discussed above, in the *Payphone Orders*, the Commission required that LECs provide payphone-specific coding digits to identify payphones for per-call compensation.[142] We find in this order that FLEX ANI is an acceptable method for transmitting these digits as part of the ANI ii under the *Payphone Orders*. In the *Second Report and Order*, the Commission concluded that the costs to be charged by LECs for providing FLEX ANI would be a cost of doing business for PSPs, and that IXCs should reimburse PSPs for those costs as part of per-call compensation. The proposed Part 69 rate element for which we grant a blanket Part 69 waiver to non-price cap LECs and blanket Part 69.4(g) permission for price cap LECs is a key part of the compensation mechanism developed by the Commission. Thus, we find that the special circumstances necessary for a blanket waiver of Part 69 have been established by the unique requirements of the *Payphone Orders* and the *Second Report and Order*. Also, for purposes of both the blanket Part 69 waiver and the blanket Part 69.4(g)permission, we find that

138 BellSouth Telecommunications, Inc., Petition to Establish New Rate Element, filed Jan. 16, 1998. *See also BellSouth Petition to Establish New Rate Element to Recover Pay Telephone Digit Transmission Costs,* CCB/CPD File No. 98-4, Public Notice (DA 98-112) (rel. Jan. 22, 1998). BellSouth filed this Part 69.4(g) petition to establish a rate element to recover over a fixed period certain costs associated with its transmission of payphone-specific coding digits.

139 47 C.F.R. § 1.3.

140 *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.

141 *See, e.g., Ameritech Operating Companies, Petition for Waiver of Section 69.4(b) of the Commission's Rules*, 6 FCC Rcd 1541, 1542, paras. 17-18 (Com. Car. Bur. 1991) (granting a blanket waiver authorizing the establishment of separate rate elements for operator services costs).

142 *Order on Reconsideration*, 11 FCC Rcd at 21,258, paras. 50 and 21,266-69, paras. 66-71; *Second Report and Order* at paras. 23-28, 42, 44.

it is in the public interest for LECs to be able to recover the costs of transmitting payphone-specific coding digits through implementation of FLEX ANI so that IXCs will receive those digits and will be able to compensate PSPs in an appropriate and timely manner and otherwise comply with the requirements of the *Payphone Orders*.

V. REQUESTS FOR WAIVERS OF CODING DIGITS REQUIREMENTS

A. *Background*

50. Shortly before October 7, 1997, the date on which per-call compensation and the payphone-specific coding digit requirements were to go into effect, the Commission received requests from several LECs seeking waivers of the requirement to provide payphone-specific coding digits and the requirement that providing payphone specific coding digits is a prerequisite to receiving per-call compensation as required by the *Payphone Orders*.[143] We did not specifically address those requests, but we granted, on our own motion, a waiver of the requirement to transmit coding digits until March 9, 1998.[144] Subsequently, we sought comment on the waiver requests of USTA, the LEC Coalition, and TDS, which are briefly described below.[145]

51. On September 30, 1997, USTA petitioned the Commission for a waiver of the requirement that LECs supply the requisite coding digits to PSPs by October 7, 1997.[146] USTA requested that LECs with digital, equal-access switches be given an additional nine months to provide the technology required to supply and accommodate the coding digits; that LECs with non-equal-access switches be exempt from providing payphone identification information until their switches are replaced or upgraded for equal-access; and that LECs be permitted to use whatever technology they select for digital, equal-access switches to provide information that will permit IXCs to track payphone calls in order to compensate PSPs.[147]

52. On September 30, 1997, the LEC Coalition requested that the Commission waive the October 7, 1997 deadline, stating that LECs would be unable to supply forty percent of payphone lines with the requisite coding digits by that date.[148] The Coalition requested that the deadline be extended until the Commission issues an order clarifying the LECs' payphone-specific coding obligations.[149]

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143 *Order on Reconsideration*, 11 FCC Rcd at 21,265-66, para. 64.

144 *Bureau Waiver Order*, 12 FCC Rcd at 16,387-88, para. 2.

145 *Public Notice* at 1. AT&T also made a request for a waiver for which we sought comment in the *Public Notice*. We do not address that request in this order. The AT&T request will be addressed in a subsequent order. *See supra* para. 4.

146 *See* USTA Petition at 1.

147 *See id.* at 11.

148 *See* LEC Coalition Petition.

149 *Id.* at 3, 5.

53. On October 1, 1997, TDS, an owner of local exchange carriers, petitioned the Commission to extend the deadline for payphone-specific coding digits from October 7, 1997, until July 1, 1998.[150] TDS states that it needs additional time to arrange agreements with database suppliers, and to complete transmission tests to IXCs selected by its subsidiaries.[151] TDS requests a waiver to begin providing coding digits through LIDB, beginning July 1, 1998.[152]

B. *Discussion*

54. We address herein the waivers filed by USTA, the LEC Coalition, and TDS, including their requests for time extensions, the methodology for providing payphone-specific coding digits, and the Commission's waiver standard. We have concluded above that FLEX ANI and hardcoded ANI ii digits are the only acceptable methods for providing payphone-specific coding digits as required by the *Payphone Orders*.[153] Thus, we reject the requests from these LECs that they may comply with the payphone-specific coding digit requirement through LIDB.

55. In the *Bureau Waiver Order*, we provided, on our own motion, a time extension until March 9, 1998, for LECs and PSPs to provide payphone-specific coding digits to IXCs and as a prerequisite for per-call compensation. The LEC Coalition, USTA and TDS requested extensions beyond March 9, 1998. We discuss below those requests for additional time to provide FLEX ANI. We are persuaded that some LECs reasonably will need additional time to implement FLEX ANI, and that some LECs should receive waivers because of technical reasons or the inability to recover costs of implementing FLEX ANI over a reasonable period. Accordingly, in this order, we provide additional waivers beyond the waivers provided in the *Bureau Waiver Order* for LECs that will require additional time to implement FLEX ANI, and those that require a waiver for technical reasons or because they could not recover the costs of implementing FLEX ANI in a reasonable time period as discussed below.

56. We affirm our conclusions in the *Bureau Waiver Order* that waiving the payphone-specific coding digit requirement for per-call compensation until March 9, 1998, is in the public interest and appropriate in the context of the implementation of the requirements of the *Payphone Orders*. Pursuant to the *Bureau Waiver Order*, LECs were required to make available payphone-specific coding digits to IXCs as soon as they were able. The record indicates, however, that many LECs were not prepared on October 7, 1997 to implement FLEX ANI due to many factors including their interpretation of the requirements of the *Payphone Orders*,[154] the complexity of implementing FLEX ANI in different types of switches with varying capabilities,[155] and the uncertainties regarding the types of methodologies

150 *See* TDS Petition.

151 *Id.* at 2-3.

152 TDS Reply at 3.

153 *See supra* paras. 23-25.

154 *See* LEC Coalition, TDS and USTA Petitions.

155 USTA Reply at 4-5. *See also* Letter from James T. Hannon, US West, to John Muleta, FCC (Jan. 16, 1998).

for the provision of payphone-specific coding digits that would be responsive to the needs of IXCs.[156] We have clarified in this order the requirements for the provision of payphone-specific coding digits. As of October 7, 1997, approximately 60% of the payphones already provided payphone-specific coding digits. By March 9, 1998, the deadline included in the *Bureau Waiver Order*, over 80 percent of payphones will be providing payphone-specific coding digits.[157] Thus, IXCs will be able to identify the majority of payphone calls for per-call compensation using payphone-specific coding digits.[158]

57. We conclude that granting a number of waivers of the payphone-specific coding digit requirement for the implementation of FLEX ANI in LEC switches, including the waiver on our own motion granted in the *Bureau Waiver Order*, is in the public interest. In the *Bureau Waiver Order*, we granted waivers until March 9, 1998, to those LECs and PSPs that could not provide payphone-specific coding digits as required by the *Payphone Orders*.[159] This limited waiver applies to the requirement that LECs provide payphone-specific coding digits to PSPs, and that PSPs provide coding digits from their payphones, before they can receive per-call compensation from IXCs for subscriber 800 and access code calls. In this proceeding, LECs have shown that because of special circumstances related to the complexities of implementing FLEX ANI, among other things, they require an extension of the waiver granted in the *Bureau Waiver Order*. As discussed further below, we conclude, as we did in the *Bureau Waiver Order*, that it is in the public interest for IXCs to pay payphone compensation beginning October 7, 1997, despite the limited waivers of the requirement to provide payphone-specific coding digits provided in the *Bureau Waiver Order* and this order, because of the clear mandate of Section 276 that PSPs be paid compensation for each and every call. The *Second Report and Order* established a default per-call compensation rate and extended the period of its applicability to address the problem presented

156 The LEC Coalition indicated on June 16, 1997, that in discussions with AT&T and MCI to resolve technical issues related to providing payphone-specific coding digits, AT&T was requesting modifications to LEC switches to alter the ANI ii coding digits because its central offices switches could not support FLEX ANI, while MCI was asking for access to LIDB and FLEX ANI. LEC Coalition Whitepaper on the Provision of ANI coding Digits, June 16, 1997. *See* Letter from Leonard S. Sawicki, MCI, to William F. Caton, Secretary, FCC (Mar. 7, 1997); Letter from E. E. Estey, AT&T to Regina Keeney, FCC (May 23, 1997). *See also* LEC Coalition Reply at 3. In August and September, however, AT&T and MCI indicated that only FLEX ANI would comply with the requirements of the *Payphone Orders*. *See ex parte* from Robert H. Castellano, AT&T to William Caton, FCC (Aug. 14, 1997); Letter from Richard H. Rubin, AT&T to Michael K. Kellogg, LEC Coalition (Sept. 29, 1997); Letter from Leonard S. Sawicki, MCI to Michael K. Kellogg, LEC Coalition (Sept. 30, 1997). *See also ex parte* Robert H. Castellano, AT&T to Magalie Roman Salas, FCC (Feb. 12, 1998) Attachment, Letter from Shannie Martin, AT&T to Robert O' Brien, Pacific Bell (July 29, 1997) (requesting two new ANI ii digits).

157 *See* Letter from LEC Coalition to Rose Crellin, Common Carrier Bureau, FCC at 1 (Mar. 4, 1998) (stating that by March 9, 1998, more than 86 percent of the payphone lines in the Coalition members' service areas will be capable of passing payphone-specific coding digits); *see also* Letter from Marie Breslin, Bell Atlantic to Magalie Roman Sales, Secretary, FCC (Jan. 12, 1998) (stating that 100% of payphone lines in the pre-merged Bell Atlantic area are FLEX ANI capable and that by the end of February 1998, 100% of the New York and New England Telephone Companies, d/b/a Bell Atlantic payphone lines will be FLEX ANI capable).

158 We note that although Bell Atlantic indicates that on December 17, 1997, it informed all customers of Bell Atlantic's access services about the availability of FLEX ANI without charge when ordered to comply with payphone per-call compensation requirements, as of January 12, 1998, no customer had ordered FLEX ANI. *Id.*

159 *Order on Reconsideration*, 11 FCC Rcd at 21,265-66, para. 64, and 21,278-80, paras. 93-99.

by the LECs, IXCs, and PSPs in these waiver requests.[160] Pursuant to the waivers we grant herein, if a payphone does not provide payphone-specific coding digits, the default per-call rate established in the *Second Report and Order* for the first two years of per-call compensation, $0.284 per-call, will continue to be the per-call default rate for that payphone until that payphone provides payphone-specific coding digits.[161]

58. Parties oppose the grant of waivers in the *Bureau Waiver Order* and any additional waivers to LECs for the provision of payphone-specific coding digits primarily because the *Payphone Orders* required that the provision of payphone-specific coding digits was a prerequisite to per-call compensation obligations, and because parties claim they require payphone-specific coding digits to block calls from payphones.[162] With regard to the justification for LECs and PSPs to obtain waivers of the requirement to provide payphone-specific coding digits, IXCs and other parties argue that the *Bureau Waiver Order* should be rescinded because LECs knew about the requirement to provide payphone-specific coding digits for over a year.[163] IXCs state that they spent millions of dollars establishing systems based on the availability of FLEX ANI coding digits to identify payphone calls, and thus, the LEC proposal to provide the LIDB approach is unresponsive.[164] We reject the IXCs' argument regarding the LECs' knowledge of the coding digit requirement because of the uncertainty evidenced in this proceeding regarding the methodology that complied with the coding digits requirements, and the methodology that would meet the needs of IXCs. As we did in the *Bureau Waiver Order*, we find the need for limited continuing waivers because of the reasonable delay by some LECs in implementing FLEX ANI caused by the uncertainty regarding the required method to provide payphone-specific coding digits, the complexity of implementing FLEX ANI, and the importance of ensuring that PSPs receive payphone

160 *Second Report and Order* at para. 121.

161 *See supra* note 47.

162 Parties that argue that the waiver should be rescinded include, for example: Comptel Comments at 3-5; WorldCom Comments at 10-12; MCI Opposition at 4, 9-10; Opposition of Frontier Corporation at 5-7. AT&T Opposition, October 7, 1997, at 8; WorldCom Reply at 2, 11. See also Letter from Richard S. Whitt and Douglas F. Brent, WorldCom to Magalie Roman Sales, FCC (Mar. 5, 1998). APCC reluctantly supports the *Bureau Waiver Order* until March 9, 1998, while Peoples argues that the *Bureau Waiver Order* should not be extended. *See also* APCC Comments at ii; Peoples Reply at 2-4.

163 CompTel Comment at 4; Frontier Comments at 4; AT&T Opposition, Oct. 7, 1997 at 8.

164 WorldCom Reply at 12. AT&T states that it spent $20 million to develop the capability to receive coding digits and track, pay and block calls from payphones. AT&T Comments, Oct. 7, 1997 at 3. On the other hand, the LEC Coalition argues that the validity of the waiver order is not at issue. It argues that these parties selected a procedurally improper vehicle for the request. *See* 47 C.F.R. § 1.115 The LEC Coalition asserts that penalties are not appropriate since they are acting pursuant to the waiver. The LEC Coalition argues that the waiver is appropriate because of legal, technological, and economic disagreements about the appropriate way to meet the requirement. The LEC Coalition notes that AT&T initially insisted that hardcoding of ANI ii digits was necessary and that MCI argues that FLEX ANI or LIDB would be sufficient provided these services were offered to IXCs without charge. The LEC Coalition asserts that MCI and AT&T did not argue that FLEX ANI was the appropriate solution until August, only two months before implementation was required. Therefore, the LEC Coalition argues there was good cause for a waiver. The LEC Coalition also notes that the waiver only affects a minority of payphones and does not preclude IXCs from identifying calls for compensation purposes. LEC Coalition Reply at 2-3 6.

compensation. We are persuaded that LECs are making substantial efforts to comply with the requirements.

59. Waiver of Commission rules is appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.[165] Several LECs have pleaded with particularity the problems they have encountered in complying with the payphone-specific coding digit requirement. We are persuaded that these are special circumstances associated with LEC implementation of FLEX ANI for payphone compensation. By granting these waivers, we do not have in mind changing any of the provisions of the *Payphones Orders*, but instead, we recognize that in the implementation of those provisions, specific circumstances arise which require waivers that are in the public interest. We grant waivers to LECs and PSPs to address the special circumstances faced by LECs and PSPs that are not yet ready to provide payphone-specific coding digits on all the payphones they serve, where FLEX ANI may be technically infeasible, or where a LEC is unable to recover the costs of implementing FLEX ANI within a reasonable time period.[166] We note that there have been complexities associated with implementation of FLEX ANI, including the uncertainty about the method of providing payphone-specific coding digits that would in fact comply with the Commission's requirements and provide the information required by IXCs to identify calls from payphones given their disparate network arrangements. The number and types of switches involved create additional problems in implementing FLEX ANI.[167] Moreover, as discussed below, for some switches, such as non-equal access switches, FLEX ANI cannot be implemented without switch replacement. Nevertheless, the industry continues to work expeditiously in implementing the payphone-specific coding digit requirements, and the waivers affect a limited number of payphones and for a limited period of time.[168]

60. We reject WorldCom's argument that the waiver granted in the *Bureau Waiver Order* does not meet the waiver standard.[169] The special circumstances for a waiver were made clear in the *Bureau Waiver Order* and some of those circumstances still exist. We note that in the *Second Report and Order*, the Commission acknowledged that the Bureau had adopted a waiver of the payphone-specific coding digit requirement. The Commission stated that "[t]his limited waiver was granted by the Bureau to afford LECs, IXCs, and PSPs an extended transition period for the provision of payphone-specific coding digits without further delaying the payment of per-call compensation as required by Section 276

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165 *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

166 *See OLS Waiver Order* regarding waivers granted for technical and economic reasons. 12 FCC Rcd at 14,862-14,864, paras. 7-12.

167 *See, e.g.*, Letter from James T. Hannon, U S West to John Muleta, FCC (Jan. 16, 1998).

168 *See* Letter from Michael Kellogg, LEC Coalition to Rose Crellin, FCC (Feb. 5, 1998) (stating that LEC Coalition members plan to have 86% the payphones in their serving area capable of passing payphone-specific coding digits by March 9, 1998).

169 WorldCom Comments at 11. WorldCom argues that LECs should not be allowed to evade the effects of the rule. WorldCom argues that the Commission is allowed to grant waivers only if special circumstance warrant a deviation from the general rule and that such deviation is in the public interest and that standard is not reached by the waiver requests. WorldCom argues that the function of a waiver is not to justify an ad hoc exception to the standard in a case. *Id.*

of the Act and this order."[170] The Commission specifically acknowledged the release of the *Bureau Waiver Order* and the need for such a waiver in granting an extension for the period in which the default per-call rate is in effect.[171] The importance of ensuring the payment of per-call compensation as mandated by Section 276 provides a substantial public interest argument for granting the waiver.[172] We note the significant progress made by LECs during the period covered by the *Bureau Waiver Order*. We emphasize the importance of implementing payphone-specific coding digit transmission as quickly as is reasonably possible.

61. To the extent that LECs argue that they should be allowed to implement either LIDB or FLEX ANI, we decline to waive the requirements established in the *Payphone Orders* as clarified in this order that LECs must implement FLEX ANI to provide payphone-specific coding digits.[173] Because in some cases this requirement places substantial burdens on those LECs that interpreted the Commission's orders to allow for the use of LIDB to provide payphone-specific coding digits, we grant limited waivers for those LECs to implement FLEX ANI.

62. As discussed further below, we conclude that a continuing waiver of this rule requiring the provision of payphone-specific digits as a prerequisite to payphone compensation in the circumstances identified in this proceeding will serve the public interest, because it will allow us to move forward in implementing the statutory requirement that PSPs receive fair compensation for calls placed from their phones while continuing to progress to a market-based structure for payphone compensation. Refusing to waive this requirement would lead to the inequitable result that many PSPs, particularly independent PSPs, who do not control the network modifications necessary to permit payphone-specific coding digits to be transmitted, would be denied any compensation, while implementation of FLEX ANI continues, even though IXCs would continue to receive the benefits of calls made from payphones. We stated in the *Bureau Waiver Order* that the unavailability of the payphone-specific coding digits will not preclude IXCs from identifying payphone calls for the purpose of determining the number of calls for which compensation is owed.[174] Nor will the waiver interfere with the payphones that currently are able to transmit payphone-specific coding digits.

63. The waivers we grant in this order to LECs and PSPs are effective March 9, 1998, to ensure that all PSPs continue to receive per-call compensation after the expiration of the waiver granted in the *Bureau Waiver Order*. The immediate implementation of these waivers is crucial to the Commission's efforts to ensure fair compensation for all PSPs, encourage the deployment of payphones, and enhance competition among PSPs, as mandated by Section 276 of the Act. We grant these waivers to all similarly situated LECs and PSPs to avoid a significant administrative impact and further delay of the payment of payphone compensation as required by Section 276.

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170 *Second Report and Order* at paras. 5, 121.

171 *Id.*

172 *Bureau Waiver Order*, 12 FCC Rcd at 16,391, para 13.

173 *See, e.g.*, USTA Petition, TDS Petition, LEC Coalition Petition.

174 *Bureau Waiver Order*, 12 FCC Rcd at 16,390-91, para. 12.

64. Finally, we do not find that granting these waivers undermines any of the policies that the Commission established in the *Payphone Orders* and the *Second Report and Order*.[175] In the *Second Report and Order*, the Commission acknowledged that the *Bureau Waiver Order* provided additional time for LECs, PSPs, and IXCs to establish mechanisms to provide payphone-specific coding digits.[176] Moreover, the default per-call rate was specifically established in the *Payphone Orders* because it was anticipated that LECs, IXCs, and PSPs would require some additional time to transition to a truly competitive payphone market.[177] Thus, contrary to the arguments of some parties, the availability of payphone-specific coding digits was never a *sin qua non* for the payment of payphone compensation. Rather, the interim compensation mechanism specifically recognized the need for a transitional scheme pending the development of, among other things, per-call tracking and the ability of IXCs to block calls from payphones. The Commission extended this transition default per-call rate period for an additional year in the *Second Report and Order* to allow LECs, PSPs and IXCs to resolve issues related to call tracking and the provision of payphone-specific coding digits.[178] Finally, the Commission has in similar circumstances provided waivers to provide carriers additional time to comply with Commission requirements.[179]

1. LEC Coalition, USTA, and TDS Waiver Requests

a. LEC Coalition Waiver Request

65. The LEC Coalition requests a waiver of the payphone-specific coding digit requirements until the Commission clarifies the coding digit requirement.[180] Prior to identifying a number of technical problems discussed below in transmitting payphone-specific coding digits, the LEC Coalition indicated that FLEX ANI would be implemented in 86.3% of the payphones it serves by the end of March 1998. The LEC Coalition stated that Ameritech, Bell Atlantic, BellSouth, and Nevada Bell indicate that

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[175] In *Wait Radio v. FCC*, the court held that: (1)"[t]he very essence of [a] waiver is the assumed validity of the general rule, and also the applicant's violation unless waiver is granted;" and (2) "the provision for waiver may have a pivotal importance in sustaining the system of administration by general rule." Moreover, the court held that "a rule is more likely to be undercut if it does not in some way take into account consideration of hardship, equity, or more effective implementation of overall policy, considering that an agency cannot realistically ignore, at least on a continuing basis. The limited safety valve permits a more rigorous adherence to an effective regulation." 418 F.2d at 1158.

[176] *Second Report and Order* at paras. 5, 121.

[177] *Report and Order*, 11 FCC Rcd at 20,568-73, paras. 52-62.

[178] *Second Report and Order* at para. 121.

[179] *See, e.g., MTS and WATS Structure*, Phase III Order, CC Docket No. 78-72, 100 FCC d 860, 875 (1985); *Policies and Rules Concerning Operator Service Access and Pay Telephone Access and Pay Telephone Compensation*; Petitions Pertaining to Originating Line Screening Services, 12 FCC Rcd 14,857, 14,862-63 at paras. 6-8 (Com. Car. Bur. 1996).

[180] LEC Coalition Petition at 4.

they will implement FLEX ANI for 100 percent of the payphones they serve by March 9, 1998.[181] The LEC Coalition states that implementation of FLEX ANI requires loading of the software in switches that do not have it, provisioning, translations, and trunk conditioning.[182] The LEC Coalition also indicates that LECs must test FLEX ANI with IXCs that wish to receive it and ensure proper functioning so that calls are not dropped.[183]

66. The LEC Coalition originally indicated that GTE, SNET, Bell Atlantic (North) and US West would be prepared to provide coding digits through LIDB by March 9, 1998, but not via FLEX ANI. Since that letter, however, Bell Atlantic (North), GTE, and US West indicate that they are implementing FLEX ANI. GTE and US West state that they previously had interpreted the *Payphone Orders* to enable the use of LIDB to comply with the payphone-specific coding requirement.[184] GTE states that it will implement FLEX ANI as soon as technically possible, if it is given waivers for its non-equal access switches, which it proposes to replace by the second quarter of 1999. GTE states that it will turn on FLEX ANI on a rolling basis as end offices are properly equipped to provide FLEX ANI and IXCs request the service.[185] GTE states that it currently provides the "27" code in 57% of payphones. It indicates that it does not currently have an interstate FLEX ANI and it would take between 8 and 18 months for it to implement FLEX ANI in all of its equal access switches. GTE states that it must

181 *Id.* at 2. The LEC Coalition reports the following plan for FLEX ANI implementation by March 9, 1998: Ameritech, Bell Atlantic, BellSouth, and Nevada Bell - 100 percent; SNET - 96.7%; SWBT and Pacific Bell - 75%; GTE - 60.4%; U.S. West 49.6%. Letter from Michael Kellogg, LEC Coalition to Rose Crellin, FCC at Attachment (Feb. 5, 1998). In total, the LEC Coalition estimates that 1.7 million of 2.0 million payphones served by the LEC Coalition will pass payphone-specific coding digits. The LEC Coalition indicates that FLEX ANI should be provisioned on a carrier by carrier basis. If FLEX ANI is provisioned on a flash cut basis, *i.e.*, transmitted to all carriers at one time, carriers should be warned, otherwise carriers that are not prepared to receive the coding digits might drop calls. The LEC Coalition also indicates that it may take less time to provision FLEX ANI if not all interexchange carriers request the service. *See infra* para. 81 regarding technical problems identified by the LEC Coalition LECs in implementing FLEX ANI.

182 The LEC Coalition states that many LEC switches have not had their switch generics upgraded and thus the generic must be installed before FLEX ANI can be offered from these switches. Letter from Michael Kellogg, LEC Coalition to Richard H. Rubin, AT&T at 2-3 (Sept. 22, 1997). In addition, for many switches FLEX ANI is not part of the switch generic and so a separate installation process is required. After the software is installed, provisioning and translations are necessary. Provisioning requires adjustments to screening tables and testing of new screening indices, and trunks must be conditioned for each carrier that wants FLEX ANI. Each trunk must be converted individually and must be coordinated closely with each carrier. *Id.* The LEC Coalition estimates that the process of converting a single carrier /end office takes 30 days. The LEC Coalition indicates that this process will take at least 2 years to complete.

183 Letter from Michael Kellogg, LEC Coalition to Robert Spangler, FCC (Dec. 18, 1998). The LEC Coalition indicates that MCI has declined to engage in tests and has not requested FLEX ANI service. *Id.*

184 Letter from F. Gordon Maxson, GTE to Magalie R. Salas, Secretary, FCC (Jan. 23, 1998) (attachment letter from Gordon Maxson, GTE to John Muleta, FCC (Jan. 16, 1998); Letter from James T. Huyghenian, U S West, to John Muleta, FCC (Jan. 16, 1998).

185 Letter from F. Gordon Maxson, GTE to Magalie R. Salas, Secretary, FCC (Jan. 23, 1998) (attachment letter from Gordon Maxson, GTE to John Muleta, FCC (Jan. 16, 1998)).

implement FLEX ANI in 1700 switches which have six versions of FLEX ANI. [186]

67. US West requests that if the Commission concludes that LIDB does not comply with the *Payphone Orders,* that it receive a waiver until March 30, 1999, to implement FLEX ANI in all of its switches.[187] US West states that it already provides payphone-specific coding digits for 75 percent of its payphones, the dumb payphones that provide the "27" coding digits. It states that it will provide FLEX ANI for 90% of all "smart" payphones by June 1998.[188]

68. SNET states that although it is not prepared to provide FLEX ANI, it currently transmits the "27" coding digit for 96% of the payphones in its serving area.[189] SNET states that it is implementing LIDB and will require an extension if the Commission decides that FLEX ANI implementation is required.[190] We have stated above that LIDB does not meet the requirements of the *Payphone Orders.* Because SNET already transmits the "27" digit for 96% of the payphones, it should not have a problem targeting those locations with more independent PSP payphones in order to enable the identification of those payphones through FLEX ANI. SWBT requests a waiver until April 15, 1998, to implement FLEX ANI and indefinite waivers for certain identified switches and call types because of technological limitations, but indicates that it will have over 70% of the lines FLEX ANI capable by March 9, 1998.[191]

69. Ameritech, Bell Atlantic, BellSouth and SBC state that they plan to implement

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186 *Id.*

187 Letter from James T. Hannon, US West to John Muleta, FCC (Jan. 16, 1998). *See also* US West Reply at 3. US West provides a detailed description of the implementation process including activities by switch type and line translations for PSP lines that provide FLEX ANI.

188 *Id.*

189 Letter from Wendy Bluemling, SNET to John Muleta, FCC at 1 (Oct. 4, 1997). We note that because independent PSPs have only recently been allowed to provide payphones in SNET's serving area, only 4% of the payphones in SNET's serving area are nonLEC payphones for which payphone-specific coding digits are not available. We anticipate that there will be more independent PSP payphones in SNET's serving area in the future for which payphone-specific coding digits will be needed. *See New England Public Communications Council Petition for Preemption Pursuant to Section 253,* 11 FCC Rcd 19713 (1996).

190 *Id.* at 2.

191 SWBT Comments at 1-3. SWBT indicates that it needs the additional 5 weeks until April 15, 1998 to install FLEX ANI properly. It states that it is installing FLEX ANI in over 360 switches and must perform switch translations and testing in all of its switch types. Letter from Chris Jines, SBC to William F. Caton, Secretary, FCC (Oct. 1, 1997). AT&T opposes an extension. AT&T Reply at 3. AT&T supports SBWT request for a limited waiver for limited calls that present a technical problem, but states that no compensation should be required for those calls. *Id.* *See infra* para. 81 regarding SWBT technical waiver request.

FLEX ANI on all payphones as soon as technically feasible.[192] These LECs state that they will implement FLEX ANI on a rolling basis as end offices are equipped and IXCs request the service.[193] BellSouth and Bell Atlantic state that they have filed a tariff that allows IXCs to order and receive FLEX ANI without charge for payphone compensation.[194] All of the BOCs have indicated problems in implementing FLEX ANI, because of problems, for example, with software upgrades, certain switch types, and network configurations that required heavy vendor software development and network reconfiguration.[195]

70. We conclude that the LEC Coalition has shown that limited waivers are justified to allow for additional time to implement FLEX ANI. As discussed above, some LECs including GTE, US West, and SNET have interpreted the *Payphone Orders* as allowing the use of LIDB to comply with the payphone-specific coding digit requirement.[196] Because of the reasons discussed above, we conclude that it is in the public interest to provide additional time for these LECs, and other LECs to implement FLEX ANI. Although the BOCs, GTE and SNET indicate that they plan to provide payphone-specific coding digits to over 80% of the payphones in their service areas by March 9, 1998, they all indicate the need for additional time to implement FLEX ANI.

71. Accordingly we grant a number of waivers to allow LECs additional time to implement FLEX ANI. We grant Bell Atlantic, SBC, Ameritech, and BellSouth no more than a 90 day waiver to resolve technical and other implementation problems with specific switch types and some call types.[197] In addition, we grant US West a waiver for provide payphone-specific coding digits until June 30, 1998, to be able to provide FLEX ANI for 90 percent of the smart payphones in its service area and until December 31, 1998, to complete FLEX ANI implementation. With regard to all other LECs that may require additional time to implement FLEX ANI, including GTE and SNET, we grant each LEC a waiver until no later than September 30, 1998, to be able to provide FLEX ANI for 75 percent of the smart payphones in its service area and until December 31, 1998, to complete FLEX ANI implementation to be able to provide payphone-specific coding digits, subject to any additional waivers for which they

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192 BellSouth states that FLEX ANI was loaded in all of its switches by October, 1, 1997 and all translation work will be completed by March 1, 1998 for BellSouth to provide the "70" coding digit. Letter from Ben Almond, BellSouth, to John B. Muleta, FCC (Sept. 30, 1997).

193 Letter from Michael Kellogg, LEC Coalition to Robert Spangler, FCC at 1 (Dec. 18, 1998).

194 *See supra* note 115.

195 *See infra* para. 81; *see also e.g.*, Letter from Marie Breslin, Bell Atlantic to Magalie Roman Salas, FCC (Mar. 3, 1998); Letter from Celia Nogales, Ameritech to Rose Crellin, FCC (Mar. 2, 1998).

196 The LEC Coalition indicates that these carriers are willing to provide free access to OLS service to identify which "07" calls are from payphones until the Commission addresses the coding digit issues. The LEC Coalition points out that this will provide IXCs a mechanism to identify which "07" calls are from payphones, in addition to the use of LEC ANI lists. LEC Coalition Petition at 4.

197 *See infra* para. 81; *see, e.g.*, Letter from Marie Breslin, Bell Atlantic to Magalie Roman Salas, FCC (Mar. 3, 1998); Letter from Celia Nogales, Ameritech to Rose Crellin, FCC (Mar. 2, 1998).

may qualify as discussed below.[198] Those LECs and PSPs that are able to transmit the required coding digits by March 9, 1998, remain obligated to do so. Similarly, all LECs and PSPs are obligated to transmit the required coding digits as soon an they are technically capable, but in any event no later than the end of the waiver period for which they are eligible pursuant to this order.

72. We require that LECs that have been granted a waiver for additional time beyond March 9, 1998, to implement FLEX ANI, must implement FLEX ANI first in locations where there are larger numbers of payphones owned by independent PSPs for which payphone-specific coding digits are not available. This will enable the identification, as soon as possible, of independent PSP owned payphones, for which payphone-specific coding digits generally are not available. All LECs also must file tariffs, as discussed above,[199] indicating the availability of FLEX ANI to IXCs, no later than March 31, 1998, with a scheduled effective date of April 15, 1998, for areas for which FLEX ANI is available, if FLEX ANI is available for 25% or more of the smart payphones in their service area. Thereafter, within the waiver period it is granted in this order, a LEC must file its FLEX ANI tariff to provide FLEX ANI to IXCs when it provides FLEX ANI to 25% or more of the smart payphones in its service area. After filing the FLEX ANI tariff LECs will continue to make FLEX ANI available as each end office becomes FLEX ANI capable. No later than March 27, 1998, LECs must be prepared to provide IXCs and PSPs information,upon request, regarding their plans to implement FLEX ANI by end office.[200] LECs operating under this waiver must roll out FLEX ANI service for each end office as it becomes available. LECs must notify IXCs regarding the availability of the service that IXCs may request. We require, as described above, that LECs provide to IXCs, upon request, ANI lists that include lists of switches and smart and dumb payphone ANI that do and do not transmit payphone-specific coding digits owned by LECs and independent PSPs.[201] These lists of ANI for payphones in a LEC's service area must be updated

[198] Several LECs have requested extensions beyond March 9, 1998. *See, e.g.*, Matanuska Telephone Association, Inc. (MTA) (filed Feb. 17, 1998) requests an extension beyond March 9, 1998, because MTA claims its switch manufacturers, Nortel and Redcom have advised MTA the switches that are needed to comply with the Commission's Order will not be available by the March 9, 1998 deadline; Deerfield Farmers' Telephone Company (Deerfield) (filed Feb. 20, 1998) is seeking a temporary waiver, until April 30, 1998, of the requirement that LECs provide payphone-specific coding digits to IXCs by March 9, 1998. Deerfield claims that this waiver will enable it to continue its planned deployment and testing of a new switch capable of providing the payphone coding function; Hardy Telecommunications, Inc. filed a petition on February 27, 1998, requesting a waiver to provide payphone-specific coding digits until June 30, 1998. The additional time is requested to complete planned deployment and testing of a new switch capable of providing payphone-specific coding digits; San Carlos Appache Telecommunications Utility, Inc. (filed Mar. 3, 1998) requests a waiver of the coding digit requirement until such time as it implements equal access in its switch facilities; Ringgold Telephone Company (filed Mar. 4, 1998) requests a waiver of the requirement for 90 days following the release of an order mandating the use of FLEX ANI to implement FLEX ANI. These petitions are granted to the extent described in the waivers provided herein and are otherwise denied.

[199] *See supra* paras. 35-37.

[200] *See supra* para. 36.

[201] *See supra* para. 36. APCC also requests that LECs be required to notify PSPs when FLEX ANI is available on its lines. APCC Reply at 4.

monthly, and be made available as ANI lists have been previously provided.[202]

b. USTA Waiver Request

73. USTA makes three requests. First, it requests that LECs be allowed to provide payphone-specific coding digits through either FLEX ANI or LIDB.[203] We deny this request, because, as discussed above, we conclude that LIDB does not meet the requirements of the *Payphone Orders.*[204] Second, USTA requests that we grant digital equal access switches an additional nine months (from October 7, 1997) to provide payphone-specific coding digits through either FLEX ANI or LIDB. As discussed above, we generally grant LECs until September 30, 1998, to be able to provide FLEX ANI to 75 percent of the smart payphones in their serving areas and until December 31, 1998, to complete FLEX ANI implementation subject to certain conditions.[205] For the reasons set forth below, we also grant additional waivers for small and midsize companies that may not be able to recover the costs of implementing FLEX ANI within a reasonable time period. Finally, we grant USTA's request that we waive the payphone-specific coding digit requirement for non-equal access switches until the switches are upgraded to equal access or replaced.

i. Midsize and Small LECs with Digital Equal Access Switches

74. USTA and several LECs argue that the cost of implementing FLEX ANI will be costly and burdensome for midsize and small LECs.[206] USTA states that midsize and small companies serve approximately 125,000 payphones. USTA estimates that midsize companies serve 71,500 network controlled payphones, 150 smart payphones owned by its members, and 17,000 independent PSP owned payphones.[207] USTA estimates that its small company members have approximately 27,000 network controlled payphones, 700 smart payphones owned by its members, and 8000 independent PSP owned payphones. USTA provides information from some of its smaller LECs with few switches and payphones indicating that the costs per payphone of implementing FLEX ANI for small companies with few

202 *Report and Order*, 11 FCC Rcd at 21,284, para. 112; *Order on Reconsideration* 11 FCC Rcd at 21,284, paras. 111-13.

203 USTA Petition.

204 *See supra* paras. 23-24.

205 *See supra* paras. 71-72. NTCA supports the requested nine month waiver for LECs to implement FLEX ANI or LIDB, to allow LECs to phase in mandatory or voluntary upgrades, switch replacements and tariffs. NTCA Reply at 1.

206 USTA surveyed 43 small and midsized companies and developed average per payphone costs for implementation of FLEX ANI. USTA estimates a wide variation in costs per-payphone depending on the generic upgrades, software costs, and the number of payphones per switch. Letter from Keith Townsend, USTA to Rose Crellin, FCC (Jan. 30, 1998).

207 Letter from Keith Townsend, USTA to John Muleta, FCC at 1-2 (Oct. 3, 1997). These estimates exclude SNET and GTE but include Cincinnati Bell. *Id.*

payphones can be substantial.[208] USTA estimates that to implement FLEX ANI it will cost $400,000 to replace a non-equal access switch, $35,000 to upgrade a non-equal access switch to equal access, and $9000 to upgrade an equal access switch that has the FLEX ANI software loaded.[209] USTA states that the costs indicated will be particularly onerous for small, rural, and midsize LECs, and states that the Commission must provide for full cost recovery by LECs of all network upgrades.[210] USTA states that FLEX ANI has been deployed by approximately 63% of the small and midsize companies.[211] NECA supports a waiver stating that equal access LECs will need 9 months to phase-in necessary technology, perform tests, establish arrangements for coordinating signaling and databases, and file tariffs.[212]

75. In this order, we include three mechanisms that respond to these concerns. First, we clarified above the cost recovery mechanism established in the *Payphone Orders* and the *Second Report and Order* for the provision of payphone-specific coding digits.[213] Pursuant to that cost recovery mechanism, LECs will charge PSPs a monthly per-phone charge for recovery of the incremental costs that are directly attributable to the costs of implementing FLEX ANI. The costs of implementing FLEX ANI can include, for example, generic upgrades excluding the costs of other software features, loading the software, paying a fee for usage of the software, translations and conditioning the trunks for each end office. These costs will be distributed over a reasonable period and be paid by all PSPs.[214]

76. Second, as discussed above, we grant small and midsize LECs an extension to implement FLEX ANI until September 30, 1998, to be able to provide payphone-specific coding digits through FLEX ANI to 75 percent of the smart payphones in its service area and until no later than December 31, 1998, to complete FLEX ANI implementation.[215] Third, we grant a limited waiver to midsize and small LECs where a LEC is unable to recover its costs, through a monthly charge for no longer than a 10 year period, from all payphones in its serving area.[216] This waiver is specifically granted

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208 *Id.*

209 Letter from Keith Townsend, USTA to Michael Carowitz, FCC (July 28, 1997).

210 Letter from Keith Townsend, USTA to William Caton, Secretary, FCC at 2-4 (Oct. 24, 1997).

211 Letter from Keith Townsend, USTA to William Caton, Secretary, FCC at 1-2 (Oct. 3, 1997).

212 NECA Comments at 2.

213 *See supra* paras. 38-43.

214 *Id.*

215 *See supra* para. 71-72.

216 In making this evaluation, LECs should not include costs for switch replacements. Below, we grant a waiver for non-equal access switches until they are upgraded to equal access or replaced. If a switch is replaced, however, the costs incurred in implementing FLEX ANI can be included. This limited waiver for small and midsize LECs that are not able to recover their costs of implementing FLEX ANI over up to a 10 year period is not available to price cap, CLASS A, and Tier 1 LECs. In 1996, the Class A LECs included all price cap LECs. *See Access Reform Third Report and Order*, 12 FCC Rcd at 21,370, n.42. The 1996 threshold for CLASS A LECs was $109

for small and midsize LECs for which the cost of implementing FLEX ANI would be unreasonably burdensome, despite provisions in this order for cost recovery. For determining whether a small or midsize LEC qualifies for this waiver, we use the following analysis that must be performed annually by the LEC. The LEC may assume that the payphone rate element established to recover the cost over a period not greater than 10 years would not be greater than 20% of the national average payphone line cost of $38.90,[217] or $7.78 per line per month.[218] LECs must make this evaluation and qualify for this waiver individually and not as part of a holding company. LECs must make this evaluation within 30 days of the release of this order, and notify IXCs, upon request, that they will not be implementing FLEX ANI pursuant to this waiver. LECs must provide, upon request, information required from LECs.[219] A LEC delaying the implementation of FLEX ANI pursuant to this waiver provision, must be prepared to submit its analysis of cost recovery for implementing FLEX ANI, if we request the analysis. We may at such time determine whether there continues to be a justification to grant a waiver to that LEC because it is unable to recover its costs of implementing FLEX ANI.

ii. Non-equal Access Switches

77. We grant LECs a waiver of the payphone-specific coding digit requirement through FLEX ANI for non-equal access switches until such switches are either upgraded to equal access or replaced.[220] USTA requests a waiver for non-equal access offices from FLEX ANI implementation

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million in annual operating revenues. *See Commission adjusts its annual Threshold to Account for Inflation for 1996 in Accordance with Section 402 of the 1996 Telecommunications Act*, Public Notice, Report No. CC-97-21, DA 97-932 (May 2, 1997). *See also Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, 69 of the FCC's Rules)*, Report and Order, 2 FCC Rcd 5770 (1987) (*ARMIS Order*), *modified on recon.*, 3 FCC Rcd 6375 (1988) *Order on Reconsideration*. *See OLS Waiver Order* regarding waivers granted for technical and economic reasons. 12 FCC Rcd at 14,862-64, paras. 7-12.

217 In the *Second Report and Order* the Commission concluded that the average per line cost was 7 cents per call times an average of 542 calls resulting in an average per line rate of $38.90. *Id.* at para. 102. We conclude that up to a ten year recovery period to implement FLEX ANI would not be unreasonable for this limited waiver for small and midsize LECs to recover their costs. We note that the Commission adopted an eight year recovery period for equal access expenses. *See Accounting Reconsideration Order,* 1 FCC Rcd 434 (1986) (*Accounting Reconsideration Order)*. We granted a number of waivers of the equal access expense amortization requirement. *See e.g.*, National Exchange Carrier Association, Inc., *Petition for Waiver of Sections 36. 191(a) and 36.421(a) of the Commission's Rules*, 3 FCC Rcd 6042 (1988) (*NECA Wavier Order*).

218 As discussed below, this analysis should not include switch replacements for which we give a waiver in this order. The analysis can include such costs as FLEX ANI software and software upgrades necessary to operate FLEX ANI, as well as translations. *See supra* para. 38-43.

219 *See supra* para. 36.

220 This waiver for non-equal access switches also covers switches that employ Bell I signaling. Bell I signaling must be used with non-equal access switches and uses a single information digit to identify classes of service. This type of signaling is not compatible with ANI ii coding digits. Letter from Keith Townsend, USTA, to Michael Carowitz, FCC at 1 (July 28, 1997). NECA supports a waiver for non-equal access un*il switches are upgraded or replaced. APCC argues that the Commission should not require LECs to upgrade non-equal access switches to equal access to provide payphone-specific digits, until they are upgraded. APCC Comments at 11n.20.

because these switches would have to be replaced in order to implement FLEX ANI.[221]

78. USTA states that parties do not oppose a waiver for non-equal access switches from the coding digit requirements.[222] USTA asserts that this waiver also should be granted to LECs that employ Bell I signaling.[223] USTA indicates that many of the non-equal access switches are in rural areas, and have few smart payphones or prison payphones.[224] NTCA also supports an exemption for non-equal access switches until the switches are replaced or upgraded for equal access because otherwise the cost of replacement would be prohibitive.[225] IXCs generally support the grant of waivers for non-equal access switches subject to certain modifications in the payphone compensation requirements.[226] We conclude that USTA has shown special circumstances with regard to non-equal access switches and switches with Bell I signalling, because LECs are not able to implement FLEX ANI in those switches at reasonable costs. We conclude that it would not be in the public interest to require the replacement of these switches with the expenditure of substantial investment solely for the provision of payphone-specific coding digits.[227] When LECs replace or upgrade these switches, however, we require that FLEX ANI be implemented within 60 days unless they qualify for another waiver discussed herein. LECs with non-equal access

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221 USTA states that there are 533 electro-mechanical switches that would require replacement in order to implement FLEX ANI. USTA also indicates that there are 760 non-equal access switches that would need upgrades to equal access before FLEX ANI could be implemented. USTA estimates that it would cost nearly $240 million to provide FLEX ANI from non-equal access switches: $212 million for non-digital, non-equal access switches and $26.6 million to upgrade digital, non-equal access switches. Letter from Keith Townsend, USTA to Magalie Roman Salas, Secretary, FCC (Dec. 2, 1997). NECA states that it has 172 NECA members with 552 non-equal access switches and an average of 450 lines per switch that would be negatively impacted by a such a requirement. NECA Comments at 3. NECA cites CIC proposals. *See CIC Code Reconsideration Order*, FCC 97-386, rel. Oct. 22, 1997. *Petitions for Waiver of the Four-Digit Carrier Identification Code Implementation Schedule*, 12 FCC Rcd 17876 (Com. Car. Bur. Dec. 31, 1997) at para. 1.

222 USTA Reply Comments at 5 citing AT&T Comments at 7 (Oct. 7, 1997); MCI Comments at 3; NECA Comments at 2-3; Sprint Comments at 3.

223 USTA Reply Comments at 6.

224 USTA letter, at 4 (July 28, 1997). Based on a survey of its members, USTA indicates that the average number of payphones per non-equal access switch is 5.6 payphones per switch. Letter from Keith Townsend, USTA to Magalie Roman Salas, Secretary, FCC (Dec. 2, 1997).

225 NTCA Reply Comments at 4.

226 AT&T Opposition, Oct. 7, 1997 at 7; MCI Reply at 5. Although parties agree with a waiver for non-equal access switches, several IXCs request that conditions be placed on compensation in areas served by non-equal access switches.

227 In the *MTS and WATS Structure, Phase III Order* in CC Docket No. 78-72, the Commission required that the non-GTE independent telephone companies convert end offices equipped with stored program control (SPC) switches to equal access within three years of a reasonable request for conversion. Absent a request, such offices are to be converted as soon as practicable in light of capital constraints and local business conditions. Independent companies were not generally required to convert end offices equipped with electro-mechanical switches according to a specific schedule regardless of whether conversion is requested. 100 FCC 2d 860, 875.

switches must provide information as required above regarding payphones in their service areas.[228]

c. TDS Waiver Request

79. Because we require LECs to implement FLEX ANI, we deny TDS's request that it be allowed to implement LIDB to comply with the payphone-specific coding digits requirement. TDS is eligible, however, for one or more of the waivers described above.[229]

2. Other Waiver Requests

80. Some LECs indicate that it would be costly to implement FLEX ANI now for switches that they plan to replace in the near future.[230] We conclude that it is not cost effective to require LECs to implement FLEX ANI in switches that are going to be replaced before October 6, 1999, the end of the default compensation period.[231] Accordingly, we grant LECs that plan to replace switches before October 6, 1999, a waiver until that date to provide FLEX ANI through those switches. In reaching this decision, we balance the need to implement FLEX ANI as soon as possible against the inefficient application of LEC resources, and we conclude that providing a waiver until the end of the period in which the default per-call rate is in effect best balances those concerns. [232]

81. SBC, BellSouth, Ameritech, SNET, and Bell Atlantic have requested additional time to implement FLEX ANI to resolve specific problems with certain switches and call types,[233] and request waivers because there are technical limitations in passing FLEX ANI payphone-specific coding digits on certain types of calls and switches, and the modifications cannot be completed by March 9, 1998.[234] SBC lists the following technical problems: (1) 0- transfer calls from DMS 200 and DMS

[228] *See supra* para. 36.

[229] Letter from R. Edward Price, TDS to Magalie Roman Salas, Secretary, FCC (Jan. 29, 1998).

[230] TDS states that it will cost $1,560,000 to add FLEX ANI to switches that it may eventually replace. TDS Reply at 2.

[231] We note that in the *OLS Waiver Order*, we granted waivers to carriers implementing FLEX ANI because while it is technically feasible to add FLEX ANI to most, if not all, LEC end offices, adding FLEX ANI to all such end office can entail significant expenditures. *OLS Waiver Order*, 12 FCC Rcd 14,862-63, para. 8.

[232] USTA Reply Comments at 4, citing Bell Atlantic Comments at 1; SBC Comments at 2-6.

[233] *See, e.g.*, BellSouth states that it has the same problem as SBC's problem (3) below. Letter from Ben Almond, BellSouth to Rose M. Crellin, FCC at 2 (Feb. 10, 1998). BellSouth also states that it has a problem with Nortel Digital Multiplex System (DMS) switches, because these switches are not able to provide FLEX ANI for smart payphones. BellSouth requests 45 days after March 9, 1998 to resolve this problem. *See also, e.g.*, Letter from Marie Breslin, Bell Atlantic to Magalie Roman Salas, FCC (Mar. 3, 1998); Letter from Celia Nogales, Ameritech to Rose Crellin, FCC (Mar. 2, 1998).

[234] *See* Letter from Jeffrey B. Thomas, SBC to Rose Crellin, FCC (Jan. 23, 1998); Letter from Chris Jines, SBC to Magalie Roman Salas, FCC (March 5, 1998); *see also* Letter from F. Gordon Maxson, GTE to Mary Beth Richards, FCC (Feb. 24, 1998).

100/200 switches affecting less than 1% of all payphone calls;[235] (2) Feature Group B (FGB) 950 calls (tandem and end office) affecting less that 1/4 of 1% of payphone calls; (3) 800 or 888 calls routing to a plain old telephone (POTS) phone number affecting less that 1% of all payphone calls; (4) CICs on feature group D (FGD) and/or GR-394 signaling affecting up to 7-9% of all payphone calls; and (5) calls received over EAOSS trunk groups from DMS end offices affecting less than 1/2 of 1 percent of payphone calls; (6) 800 calls at the tandem switch.[236] SBC requests the following waivers for additional time to provide FLEX ANI based on these technical problems: problem 1 - October 15, 1999; problems 2 and 3 - until 5 months after a standard is developed or five years; problem 4 - until October 15, 1999; and problem 5 - until August 15, 1998.

82. As discussed above, we grant the BOCs 90 days to resolve technical problems in implementing FLEX ANI.[237] Although we discuss herein only the problems raised by SBC, we note that other BOCs have raised additional technical problems that also are encompassed by the waiver we grant for 90 days. BOCs must provide payphone-specific coding digits earlier than the end of the waiver period for each technical problem, if these problems are resolved earlier than the end of the waiver period granted herein. BOCs must notify IXCs regarding the call and switch problems the BOCs are having on a monthly basis. It is our expectation that BOCs and other LECs will share information regarding the types of problems that they are having and solutions developed to resolve those problems to minimize the delay for the provision of payphone-specific coding digits. With regard to these technical problems, BOCs and other LECs must notify IXCs regarding these problems in implementing FLEX ANI. With regard to problem (2), cited by SBC, FGB service, we note that there is currently no standard to provide payphone-specific coding digits and carriers wishing to receive FLEX ANI must take FGD service. Thus, pending the development of standards, we grant all LECs a waiver and require that carriers taking FGB service pay PSPs per-call compensation using ANI lists or other means they may identify.

VI. REQUESTS FOR WAIVER OF PAYPHONE COMPENSATION REQUIREMENTS

A. *Introduction*

83. The *Bureau Waiver Order* granted limited waivers to afford LECs, IXCs, and PSPs an extended transition period for the provision of payphone-specific coding digits without further delaying the payment of per-call compensation as required by Section 276 of the Communications Act.[238] These limited waivers apply to the requirement that LECs provide payphone-specific coding digits to PSPs, and that PSPs provide coding digits from their payphones before they can receive per-call compensation from IXCs for subscriber 800 and access code calls.

84. On November 6, 1997, ITA filed a petition for partial reconsideration of the

235 A 0- transfer occurs when a customer dials "0" without any additional numbers and requests a transfer to a carrier that participates in 0- transfer service with SWBT or Pacific. *Id.* at 3.

236 *Id.*

237 *See supra* para. 71.

238 47 U.S.C. § 276.

Bureau Waiver Order.[239] ITA requests that the Commission preclude PSPs from assessing per-call compensation payment obligations on prepaid phone card services for the duration of the waiver, and until accurate coding digit information is provided.[240] ITA claims that providers of prepaid cards will be irreparably harmed without the ability to track and block payphone calls in real time, because this is the only time a prepaid provider can recover a charge from its customer.[241]

85. On December 15, 1997, AirTouch filed a petition for a limited waiver of its payment obligations to pay any payphone service providers (PSPs) on a per-call basis from October 7, 1997, until those PSPs provide payphone-specific coding digits allowing AirTouch to selectively block calls from payphones operated by that PSP.[242] AirTouch claims that because of the *Bureau Waiver Order* and other circumstances, AirTouch will not receive coding digits and will not be able to block calls coming specifically from payphones.[243] AirTouch states that it will suffer substantial harm if it must pay compensation on a per-call basis without the ability to block calls selectively, because PSPs will have no incentive to negotiate rates and AirTouch's liability will be unlimited for calls from payphones.[244]

B. *Discussion*

86. Subsequent to the *Bureau Waiver Order*, IXCs and other parties argued in pleadings in response to that order that they should be relieved of the payphone compensation obligation because LECs were not providing payphone-specific coding digits.[245] For the reasons discussed below, we decline to relieve IXCs of the obligation to pay per-call compensation during the waiver period of the *Bureau Waiver Order* and the additional waivers we grant herein. The *Payphone Orders* concluded that the primary economic beneficiaries of a subscriber 800 and access code call are the carriers that carry the call.[246] We are not persuaded that our waivers of the provision of payphone-specific coding digits revises the Commission's conclusion. Nor do the waivers preclude IXCs from identifying and paying payphone compensation.[247] The *Bureau Waiver Order* required that IXCs pay per-call compensation during the

239 *Pleading Cycle Established for Petition for Reconsideration of Coding Digit Waiver Order*, DA 97-2734, Dec. 31, 1997.

240 ITA Petition at 2, 6.

241 *Id.* at 2.

242 AirTouch Petition at ii, 6. *See Pleading Cycle Established for Petition for Waiver of the Coding Digit Waiver Order*, DA 97-2735, Dec. 31, 1997.

243 AirTouch Petition at 9.

244 *Id.* at 12.

245 *See supra* para. 87.

246 *Order on Reconsideration*, 11 FCC Rcd 21,275 at para. 88.

247 *Bureau Waiver Order*, 12 FCC Rcd at 16,390-91, para. 12.

coding digit waiver period as required by the *Payphone Orders*.[248] During that period, IXCs and their customers continued to use payphones to make calls that must be compensated pursuant to the *Payphone Orders* and the *Second Report and Order*. Moreover, IXCs already have implemented surcharges for per-call compensation and they would be benefiting unreasonably if we were to grant them a waiver of the payphone compensation obligations so that they do not have to pay per-call compensation when payphone-specific coding digits are not available.[249] The *Bureau Waiver Order* waived the requirement that LECs and PSPs provide payphone-specific coding digits as a precondition to per-call compensation. The *Bureau Waiver Order* did not waive any compensation requirements. For the reasons discussed herein, we similarly decline to provide such a waiver or reconsider our decision in the *Bureau Waiver Order* to waive the coding digit requirement while continuing to require the payphone compensation obligations.

87. Several IXCs and other parties argue that they should be relieved of payphone compensation obligations because: (1) LECs were aware of the clear language and requirements specified in the *Payphone Orders* that payphone-specific coding digits must be provided by October 7, 1997, so they should not be absolved of the requirement and should be legally liable for any compensation lost by PSPs due to their inability to comply;[250] (2) the payment obligation should have been waived for IXCs and other payors;[251] and (3) IXCs and other payors should not have to pay compensation because they are unable to block calls from payphones and must therefore pay compensation they could otherwise avoid if payphone-specific coding digits were available.[252] For the reasons discussed above, we conclude that LECs are entitled to waivers to complete implementation of FLEX ANI. In addition, we reject the

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[248] The Bureau noted that for 60% of the payphone-specific coding digits were already being provided and that IXCs could use ANI lists to identify payphone calls if payphone-specific coding digits were not available. *Bureau Waiver Order*, 12 FCC Rcd at 16,389, para. 6.

[249] *See* AT&T News Release, April 30, 1997 ("AT&T adjusts business long-distance prices to offset new payphone costs." "To recover this cost, AT&T will increase prices for interstate toll-free services by 7 percent and prices for business international and interstate outbound services by 2 percent."); *"800" Data Toll Hike Hits Users*, Communications Week, Aug.18, 1997 (MCI raises its 800 service rate in March 1997 by 3 percent and in May by 3 percent; AT&T added 35 cent surcharge to coinless payphone calls effective June 1, 1997; MCI added a $0.30 surcharge to toll-free calls from payphones effective October 13, 1997).

[250] *See, e.g.*, Comptel Comments at 2; Sprint Reply at 4; WorldCom Reply at 16; Excel Reply Comments at 7. APCC and the LEC Coalition, however, argue that IXCs should not be excused from payment obligations required by the *Payphone Orders* implementing Section 276. APCC Reply at 2; LEC Coalition Reply at 2. APCC argues that although allowing PSPs to seek damages is not an adequate substitute for the IXC payment obligation, the Commission should rule that PSPs are entitled to recourse against LECs that fail to transmit ANI. APCC Reply at 3. APCC argues that LECs that fail to implement the required system by March 9, 1997, should be ineligible for payphone compensation and should be liable for any resulting losses to PSPs, and IXCs that fail to accept and track calls based on FLEX ANI should be subject to double compensation based on reasonable estimates of dial around call volumes. APCC Comments at iii.

[251] AT&T Opposition, Oct. 7, 1997 at 8; Sprint Reply at 4.

[252] Frontier Comments at 6-7; RCN Comments at 4; Excel Reply at 5-7; LCI Reply at 1-3. AT&T restates its position that carriers should not be required to pay compensation unless payphones transmit payphone specific coding digits, because carriers will not be able to block calls from such phones and cannot bill customers on a per-call basis from those phones. *See* AT&T Comments, Oct. 7, 1997 at 3.

argument that LECs that are unable to provide FLEX ANI on October 7, 1997, during the waiver period in the *Bureau Waiver Order* or for the duration of the waivers granted in this order, should be responsible for the payphone compensation due from IXCs to PSPs.[253] We conclude that the need for these waivers does not alter the conclusions in the *Payphone Orders* that the IXCs are the economic beneficiary of subscriber 800 and access code calls and should be the party to pay payphone compensation in light of the Congressional mandate in Section 276.[254]

88. We deny ITA's petition for reconsideration of the obligation to pay compensation during the waiver period, and AirTouch's petition for waiver seeking similar relief, both of which were filed in response to the *Bureau Waiver Order*. We also deny the requests of ITA and AirTouch that they be granted relief from the payment obligations of the *Payphone Order* and the *Second Report and Order* until they can block calls. Although AirTouch and ITA use different administrative mechanisms, they both argue that they should be relieved of the payphone compensation obligations because they will be harmed if they are unable to identify and block payphone calls while the waiver of the payphone-specific coding digit requirement is in effect, or until they can block calls. ITA argues that the Commission should deny in part the requested LEC waivers because granting them would result in harm to prepaid card providers.[255] ITA requests a waiver of payphone compensation until "accurate" payphone-specific coding digits are provided.[256] ITA claims that it will incur $31.8 million in unrecoverable charges on prepaid cards.[257] ITA asserts that prepaid providers cannot recover payphone charges from customers unless payphone calls can be identified/blocked in real-time; otherwise, they will be irreparably harmed.[258] ITA contends that because prepaid card service providers have postalized rates and are paid in advance, the only way to recover a payphone charge is at the time a payphone-originated call is placed.[259]

89. ITA and AirTouch argue that relieving the LECs and PSPs of the obligation to provide payphone-specific coding digits while requiring payors to continue payment obligations undermines the market-based approach used to establish the per-call default compensation rate.[260]

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[253] In the *Payphone Orders* the Commission concluded that expenses associated with administering compensation rules . . . must be borne by the entity that receives the primary economic benefit of the payphone calls." *Order on Reconsideration*, 11 FCC Rcd at 21,284, para. 111. The IXC is responsible for paying for the cost of administering compensation. *Id.* at 21,275, para. 88.

[254] 47 U.S.C. § 276.

[255] ITA Reply at 1; WorldCom at 2.

[256] ITA Petition at 4.

[257] ITA Reply at 3.

[258] *Id.* at 2.

[259] *Id.* at 3.

[260] ITA Petition at 3; AirTouch Petition at 5.

AirTouch seeks a waiver until it can selectively block calls.[261] AirTouch argues that it could be obligated to pay as much a $1 million in compensation for calls it is unable to block because the calls do not provide payphone-specific coding digits.[262] AirTouch asserts that it is entitled to the waiver because it detrimentally relied on the fact that coding digits would be available to block payphone calls.[263] AirTouch argues that it should be provided with a waiver because unlike other paging companies, such ,as Paging Network and Metrocall who do not plan to block calls from payphones, it offers call blocking, which enables customers to avoid additional charges.[264] Because it is unable to block 40 percent of the payphone calls, it states that it will be obligated for that compensation. Several parties support AirTouch's petition for waiver and ITA's request for reconsideration and request that they also be exempted from the payphone obligations established in the *Payphone Orders* and the *Second Report and Order*.[265] On the other hand, APCC and the LEC Coalition argue that the Commission should deny both petitions because AirTouch and ITA are not underlying facilities-based carriers obligated to pay per-call compensation,[266] the default rate established in the payphone orders does not depend on the ability to block payphone calls, and it would not be in the public interest for the Commission to grant these petitions because delaying payphone compensation would be contrary to Congressional intent.[267] The LEC Coalition argues that IXCs have already increased subscriber 800 rates, increased per-call charges on customers, and gained from reductions in state and federal access charges.[268]

90. We conclude that AirTouch has not shown special circumstances or that a waiver is in the public interest. We also decline to reconsider, in response to ITA's Petition, our decision in the *Bureau Waiver Order* to waive payphone-specific coding digit requirements while maintaining, and not waiving, the per-call compensation requirements during the waiver period. We note that carriers have known since the adoption of the 1996 Act, in February 1996, that Congress required in Section 276 that PSPs be compensated for "each and every call."[269] Moreover, on September 20, 1996, parties were notified that the per-call default compensation rate in the first year of per-call compensation, the default

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261 AirTouch Petition at 6 n.21.

262 AirTouch Comments at 2.

263 *Id.* at 3.

264 *Id.*

265 *See, e.g.,* TRA Comments at 2; Dispatchers Comments at 4; PageMart Comments at 2.

266 APCC Reply at 2. The LEC Coalition points out that the Commission did consider that there were problems in implementing blocking capabilities in adopting the per-call rate, that IXCs are the parties obligated to pay compensation, and that IXCs can, but do not have to, recover the per-call rate charges from their customers. LEC Coalition Opposition at 2-3 (citing the *Report and Order*, 11 FCC Rcd 20,541, 20,584, and 20,586 at paras. 83, 86; *Order on Reconsideration*, 11 FCC Rcd 21,233, 21,275, 21,277, paras. 88, 92).

267 APCC Comments at 1-4; LEC Coalition Comments at 1-8.

268 LEC Coalition Opposition at 3.

269 47 U.S.C. § 276.

rate adopted because the payphone market would require a period of transition, would be $0.35 per-call. Despite the court decision vacating, in part, the *Payphone Orders* in July 1997, and the adoption of the new default compensation rate of $0.284 in October 1997, parties have been on notice that they must pay per-call compensation. In creating the default rate in the *Payphone Orders* and the *Second Report and Order*, we also put carriers on notice that there may be transitional problems in moving to a totally unregulated per-call rate.

91. In the *Payphone Orders*, the Commission established a requirement that underlying facilities-based interexchange carriers pay per-call compensation.[270] We concluded in the *Report and Order* that the "carrier-pays" system for per-call compensation places the payment obligation on the primary economic beneficiary in the least burdensome, most cost effective manner.[271] In addition, under the carrier-pays system, individual carriers, while obligated to pay a specified per-call rate to PSPs, have the option of recovering a different amount from their customers, including no amount at all.[272] We noted in the *Report and Order*, however, that under the carrier-pays approach, carriers have "the most flexibility to recover their own costs, whether through increased rates to all or particular customers, through direct charges to access code call or subscriber 800 customers, or through contractual agreements with individual customers."[273] As discussed below, the Commission adopted a per-call default rate that provides fair compensation to PSPs for the use of payphones to originate access code and subscriber 800 calls. Per-call compensation to PSPs is a cost of providing service that IXCs can pass on to their own customers, just as they pass on other costs.

92. In *Illinois Public Telecomm.*, the court remanded the per-call default compensation issue to the Commission on the ground that the Commission had not justified its conclusion that the costs of local coin calls were similar to those of subscriber 800 and access code calls.[274] The court did not hold, however, that the Commission erred in using a market-based rate because some carriers lack the ability to block calls. Although the court noted that call blocking technology was available, and acknowledged that the ability to block calls gave IXCs leverage in negotiating rates, the court held that the per-call default rate adopted by the Commission should be reasonably justified so that IXCs are "not forced to resort to call blocking only because the default rate has been set at an unreasonable level."[275] On remand,

270 LEC Coalition Opposition at 1.

271 *Report and Order*, 11 FCC Rcd at 20,584, para. 83.

272 *Id.*

273 *Id.* In the *Order on Reconsideration*, the Commission clarified which carriers are required to pay compensation and provide per-call tracking. The Commission clarified that "a carrier is required to pay compensation and provide per-call tracking for the calls originated by payphone if the carrier maintains its own switching capability, regardless if the switching equipment is owned or leased by the carrier." Moreover, the Commission clarified that, "if a carrier does not maintain its own switching capability, then, as set forth in the Report and Order, ... the underlying carrier remains obligated to pay compensation to the PSP in lieu of its customer that does not maintain a switching capability." *Order on Reconsideration*, 11 FCC Rcd at 21,277, para 92.

274 *Illinois Public Telecomm.*, 117 F.3d at 564.

275 *Id.*

the Commission obtained further data on cost differences, and explained fully the cost adjustments to the local coin rate, which justified a reduction in the per-call compensation for subscriber 800 and access code calls, absent a negotiated agreement, from $0.35 to $0.284.[276] The Commission considered alternatives to the market-based approach to establish a default rate, but rejected them as not required either by the court's remand or by the statutory standards. The Commission also concluded that the proposed alternatives were inferior to its chosen approach.[277] The Commission's actions are consistent with the agency's statutory mandate to ensure fair compensation for "each and every" call.[278]

93. We cannot at this late date find that certain parties, although they have continued to use payphones to make subscriber 800 and access code calls, which PSPs cannot block because of statutory limitations,[279] may be relieved of the statutory requirement that there be compensation for these calls as required by Section 276. As the Commission already stated "because Section 276 creates no exceptions for calls facilitated by reseller or debit card providers, such exemptions from the obligation to pay compensation, even on an interim basis, would be contrary to the congressional mandate that we ensure fair compensation for 'each and every completed intrastate and interstate call.'"[280]

94. We decline to grant a waiver to ITA and AirTouch of the payphone compensation requirements of the *Payphone Orders* because they are unable to block payphone calls, nor do we find that the inability to block payphone calls undermines the market-based approach for payphone compensation. In the *Second Report and Order* the Commission established a default rate for per-call compensation and extended the period for default compensation for to years while acknowledging that it

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276 *Second Report and Order* at paras. 16-67. Thirty comments and 30 reply comments were received in response to the *Notice*. In the remand proceeding, parties claimed that only a rate derived from cost data on the record, rather than a market-based approach adjusted for cost differences, would provide a valid per-call rate. *Second Report and Order* at paras. 69-75. In the *Second Report and Order*, the Commission performed an analysis of the long run costs of payphone service based on cost information on the record that concluded that the cost per-call for a provider to install a payphone was in the range of $0.247 to $0.281, per call. *Second Report and Order* at para. 119. Assumed to be a lower boundary of per-call compensation, this alternative approach, which the Commission rejected as not being consistent with the goals of Section 276, resulted in a per-call rate not significantly different from the adjusted market-based rate of $0.284 that the Commission ultimately adopted. *Id.* at para. 119.

277 *Second Report and Order* at paras. 16-28. The Commission concluded that the adjusted market-based per-call rate it established promotes the goals of Section 276 of the Act, fair compensation, the deployment of payphones, and competition. *Id.* at para. 117.

278 The Commission has the authority to employ different methodologies and/or regulatory models to arrive at a particular rate (*see Permian Basin Area Rate Cases*, 390 U.S. 747, 767 (1968)), has the authority to exclude suspicious data or statistical outliers, and is not required to include all data when determining a rate (*see Bell Atlantic Tel. Co. v. FCC*, 79 F.3d 1195, 1202 (D.C. Cir. 1996)).

279 *See Second Report and Order* at para. 122 n.325.

280 *Report and Order*, 11 FCC Rcd at 20,586, para. 87. *See also* LEC Coalition Reply at 1-2. We are not persuaded by AirTouch's claim that it is entitled to a waiver because other paging companies have chosen not to block calls and it has chosen to block calls. This is purely a business decision and AirTouch has the ability to structure its business offering given the requirements of per-call compensation.